

AMENDED IN SENATE JULY 15, 2010

AMENDED IN SENATE JUNE 16, 2010

AMENDED IN ASSEMBLY APRIL 15, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2598

Introduced by Assembly Member Brownley

February 19, 2010

An act to add Section 6315 to the Public Resources Code, relating to tidelands and submerged lands.

LEGISLATIVE COUNSEL'S DIGEST

AB 2598, as amended, Brownley. Tidelands and submerged lands: sea level action plan.

Existing law grants to various local entities the right, title, and interest of the State of California in and to certain tidelands and submerged lands in trust generally for purposes of commerce, navigation, and fisheries, and for other public trust purposes.

This bill would require each local trustee of granted public trust lands, as defined, to give management priority to, and take all reasonable actions that are necessary for, the preparation of a sea level action *plan* for all *of* its legislatively granted public trust lands. The bill would require a local trustee to prepare the plan by July 1, ~~2011~~ 2012, and submit the plan to the Natural Resources Agency, the Governor's Office of Planning and Research, and the State Lands Commission. The bill would require the plan to include, among other things, an assessment of the impact of sea level rise on granted public trust lands, an estimate

of the financial cost of this impact, and strategies to prevent or mitigate damage to development and infrastructure and to protect and enhance habitat.

This bill would ~~provide that~~ *require* the State Lands Commission ~~shall to~~ exempt a local trustee of granted public trust lands from the requirement to prepare a sea level action plan *or grant a deadline extension*, if the revenues derived from its granted public trust lands and assets or funding to it from sources such as the Ocean Protection Council are not sufficient to pay for the cost of developing the plan.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Upon admission to the United States, and as incident of its
4 sovereignty, the State of California received title to the tidelands,
5 submerged lands, and beds of navigable waterways within its
6 borders to be held subject to the public trust doctrine for statewide
7 public purposes, including commerce, navigation, fisheries,
8 preservation of lands in their natural state, and other recognized
9 public trust uses.

10 (b) The state has made grants of public trust lands to over 80
11 local public entities, each of which manages the state's public trust
12 lands as trustee pursuant to the public trust doctrine, legislative
13 grants, the California Constitution, and other laws governing the
14 trust and the trustee's fiduciary responsibilities.

15 (c) A local trustee of granted public trust lands is charged with
16 managing the state's granted public trust lands on behalf of the
17 state for the benefit of all the people of California.

18 (d) As part of its fiduciary duty, a local trustee of granted public
19 trust lands is required to take reasonable steps under the
20 circumstances to take and keep control of and preserve the trust
21 property.

22 (e) The effects of climate change and sea level rise will have
23 significant implications for the state's economic and social future.

24 (1) Approximately 80 percent of California's 33 million
25 residents live within 50 kilometers of the Pacific Ocean.

1 (2) The coastal economy contributes more than \$50 billion
2 annually to the State of California.

3 (3) Port activities alone in California generate an estimated \$7
4 billion in state and local tax revenues annually and employ more
5 than one-half million people in California. Nationwide more than
6 2 million jobs are connected to California ports.

7 (4) In 2007, more than 40 percent of the total containerized
8 cargo entering the United States arrived at California ports, and
9 almost 30 percent of the nation's exports left from California ports.

10 (5) In 2002, cargo operations shut down at west coast ports for
11 10 days, and the estimated loss to the national economy was \$1
12 billion per day.

13 (f) The use of revenues received from trust lands and trust assets
14 by a local trustee of granted public trust lands is limited by the
15 legislative grant, the public trust doctrine, and other laws governing
16 the trust. An evaluation of the impacts of sea level rise on granted
17 public trust lands is directly related to the operation and
18 management of these resources managed on behalf of the state by
19 local trustees and is, therefore, a purpose consistent with the public
20 trust for commerce, navigation, and fisheries, and the applicable
21 legislative grants.

22 (g) Whereas a local trustee of granted public trust lands holds
23 and manages its public trust property, including the lands and
24 revenue derived from that property, as a state asset for the benefit
25 of the people of California and cannot use the trust corpus for
26 general municipal purposes or other purposes not consistent with
27 the public trust doctrine and its legislative grant, and because the
28 State Lands Commission is provided with a mechanism in this act
29 to exempt a local trustee that does not have sufficient state funds,
30 either through the trust or other existing funding mechanisms, to
31 pay for the cost of developing a sea level action plan, there is no
32 state-mandated local program that results from the implementation
33 of this act.

34 SEC. 2. Section 6315 is added to the Public Resources Code,
35 to read:

36 6315. (a) For the purposes of this section, "a local trustee of
37 granted public trust lands" means a county, city, or district,
38 including water, sanitary, regional park, port, or harbor district, or
39 any other local political or corporate subdivision that has been
40 granted public trust lands through a legislative grant.

1 (b) ~~Notwithstanding any other law, a~~ A local trustee of granted
2 public trust lands shall give management priority to, and take all
3 reasonable actions that are necessary for, the preparation of a sea
4 level action plan pursuant to this section for all of its legislatively
5 granted public trust lands.

6 (c) The plan shall be prepared by July 1, ~~2011~~ 2012, and in
7 consideration of, and using relevant information contained in, the
8 2009 California Climate Adaptation Strategy prepared by the
9 Natural Resources Agency, the Report on Sea Level Rise
10 Preparedness prepared by the State Lands Commission *and any*
11 *subsequent updates to that report*, and any other related resource.
12 The plan shall include all of the following:

13 (1) An assessment of the impact of sea level rise on granted
14 public trust lands.

15 (2) Maps showing the areas that may be affected by sea level
16 rise in the years 2050 and 2100. These maps shall include the
17 potential impacts of 100-year storm events. *A trustee may rely on*
18 *appropriate maps generated by other entities.*

19 (3) An estimate of the financial cost of the impact of sea level
20 rise on granted public trust lands. The estimate shall consider, but
21 is not limited to, both the potential cost of repair of damage to and
22 value of lost use of improvements and land and the anticipated
23 cost to prevent or mitigate potential damage.

24 (4) Strategies to prevent or mitigate damage to existing
25 development and infrastructure, and to protect and enhance
26 undeveloped, vulnerable shoreline areas containing critical habitat
27 and opportunities for habitat creation, including wetland
28 restoration, habitat migration, or the creation of buffer zones on
29 granted public trust lands. When developing these strategies,
30 especially along the coastline, a grantee shall consider feasible,
31 nonengineered measures, such as ~~beach replenishment~~, coastal
32 setback lines; and managed retreat of structures.

33 (5) Design standards that would avoid *or mitigate* impacts to
34 new development and infrastructure.

35 (6) Implementation measures and timetables.

36 (d) In preparing a sea level action plan, a local trustee shall
37 conduct at least one public hearing and consult with its lessees,
38 local, state, and federal agencies, and other users of the granted
39 public trust lands.

1 (e) A copy of the plan shall be submitted to the Natural
2 Resources Agency, the Governor's Office of Planning and Research
3 or its successor agency, and the State Lands Commission.

4 (f) The commission may exempt a local trustee of granted public
5 trust lands from this section or allow a local trustee to submit a
6 modified sea level action plan if the commission finds either of
7 the following:

8 (1) None of the local trustee's public trust lands is subject to
9 sea level rise by 2100.

10 (2) The cost to provide the plan substantially outweighs the
11 benefit the plan would have in preventing the potential economic
12 and environmental harms associated with sea level rise on the local
13 trustee's granted public trust lands.

14 (g) The commission shall exempt a local trustee of granted
15 public trust lands from this section *or grant a deadline extension*,
16 if the revenues derived from its granted public trust lands and
17 assets subject to subdivision (b) of Section 6306 or funding made
18 available to it from sources such as the Ocean Protection Council
19 are not sufficient to pay for the cost of developing the plan.

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22 CORRECTIONS:

23 Text—Page 4.
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